

EXHIBIT 49

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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 **STEVEN RUPP; STEVEN**
16 **DEMBER; CHERYL JOHNSON;**
17 **MICHAEL JONES;**
18 **CHRISTOPHER SEIFERT;**
19 **ALFONSO VALENCIA; TROY**
20 **WILLIS; and CALIFORNIA RIFLE**
21 **& PISTOL ASSOCIATION,**
22 **INCORPORATED,**

23 Plaintiffs,

24 v.

25 **ROB BONTA, in his official capacity**
26 **as Attorney General of the State of**
27 **California; and DOES 1-10,**

28 Defendants.

8:17-cv-00746-JLS-JDE

**SUPPLEMENTAL EXPERT
REPORT AND DECLARATION
OF DENNIS BARON**

Courtroom: 8A
Judge: The Honorable Josephine
L. Staton

Action Filed: April 24, 2017

¹ Rob Bonta has succeeded former Attorney General Xavier Becerra as the Attorney General of the State of California. Pursuant to Federal Rule of Civil Procedure 25(d), Attorney General Bonta, in his official capacity, is substituted as the defendant in this case.

**SUPPLEMENTAL EXPERT REPORT AND DECLARATION OF
DENNIS BARON**

I, Dennis Baron, declare:

1. I have been asked by the Office of the Attorney General for the State of California to prepare an expert report and declaration regarding Corpus Linguistics research. This supplemental expert report and declaration (“Report”) is based on my own personal knowledge and experience, and, if I am called as a witness, I could and would testify competently to the truth of the matters discussed in this Report.

2. I have evaluated the historical use of the terms *arms* and *accoutrements* and have concluded that there existed, from the Founding Era through the period following the ratification of the Fourteenth Amendment, a distinction between *arms* and *accoutrements*. In my opinion, optional firearm accessories that are not integral or necessary for the functioning of a weapon—including large-capacity magazines (henceforth, LCMs), along with other magazines, ammunition cases, cartridge cases or boxes, and other ammunition storage containers or devices—are not *arms*, but are part of the category known as *accoutrements*, as those terms were used in the 18th and 19th centuries. I have also evaluated the lexical evidence for “repeater” *air guns*, *wind guns*, and *magazine wind-guns*, also called *magazine guns*, in the Founding era. Air guns used compressed air instead of gunpowder to propel a ball. The lexical evidence leads me to conclude that, although several artisans did invent air guns capable of firing multiple balls without reloading the ammunition or recharging the air cylinder, such guns were rare in England and America. There are very few mentions of them in newspapers, and no mentions in the other historical databases that I consulted. Some of these guns were one-offs and others did not seem to have been manufactured in any large quantity; and they were typically treated as curiosities, with the inventor (often a clockmaker) or owner exhibiting them for a fee. The

1 mechanisms of repeater air guns were complex—as noted, they were often made by
2 clockmakers rather than armorers—and they were difficult to maintain in normal
3 circumstances, let alone in times of conflict. There is no lexical indication that
4 these repeater air guns were ever adopted as military weapons in England or
5 American in the eighteenth and early nineteenth centuries. And there is no
6 indication that they were ever used for personal self-defense.

7 **BACKGROUND AND QUALIFICATIONS**

8 3. I am a resident of Champaign, Illinois, and I am currently Professor
9 Emeritus and Research Professor at the University of Illinois, where I have served
10 as a member of both the Department of English and the Department of Linguistics
11 since 1975. I served as Head of the Department of English for six years and before
12 that as Director of Rhetoric at the university for 11 years. I earned my Ph.D. in
13 English language and literature from the University of Michigan in 1971, with a
14 dissertation on historical aspects of the English language from Old English to
15 Present-Day English, and I continue to publish widely on matters of historical
16 language use, and on topics related to language and law. I am a life member of the
17 Linguistic Society of America, the American Dialect Society, and the Modern
18 Language Association, as well as a member of the National Council of Teachers of
19 English. I have held a Fulbright Fellowship (to France), a National Endowment for
20 the Humanities Fellowship, for work on a book on language and law, and, most
21 recently, a Guggenheim Fellowship, for work on my latest book on language and
22 law. I have also published books on language reform, on usage, and on gender in
23 language.

24 4. Most relevant for this report, I published two books on language and
25 law: *The English-Only Question: An Official Language for Americans?* (Yale Univ.
26 Press, 1990) and *You Can't Always Say What You Want: The Paradox of Free*
27 *Speech* (Cambridge Univ. Press, 2023). In addition, I served as lead author on what
28 came to be called “the Linguists Brief” in *District of Columbia v. Heller* (544 US

1 570 2008), a brief cited both by Justice Scalia in his opinion in the case, and by
2 Justice Stevens in his dissent. I was a co-author on another brief by professors of
3 linguistics and corpus linguistics, in *New York State Rifle and Pistol Ass’n. v. Bruen*
4 (No. 20-843, 2022), which Justice Breyer cited in his dissent. In that dissent,
5 Justice Breyer also quoted directly from my essay “Corpus evidence and the
6 meaning of ‘bear arms’” (*Hastings Constitutional Law Quarterly*, 46.3: 2019). I
7 have spoken about historical meaning and the Second Amendment at the Federalist
8 Society at the University of Chicago Law School, at the Neubauer Symposium on
9 Historical Semantics at the University of Chicago, at Brigham Young University
10 Law School, at Stanford University, and at the conference “*Heller* after Ten Years”
11 at UC Hastings College of the Law. I have also written opinion essays on historical
12 meaning and the Second Amendment for the *Washington Post* and the *Los Angeles*
13 *Times*. And I have submitted a declaration on behalf of the State of California in
14 *Duncan et al. v. Bonta* (Case No. 3:17-cv-01017-BEN-JLB), a case challenging
15 California’s restrictions on LCMs, and a declaration on behalf the State of Rhode
16 Island in *Ocean State Tactical, LLC, et al. v. State of Rhode Island* (Case No. 1:22-
17 cv-00246-JJM-PAS) (D. R.I.), which also concerns the constitutionality of LCM
18 restrictions. In the past twenty years I have been an expert consultant in fourteen
19 cases involving document interpretation.

20 5. My recent essay, “Look It Up in Your *Funk and Wagnalls*: How
21 Courts Define the Words of the Law,” an analysis of how judges incorporate
22 information from dictionaries and digitized corpora as they ascertain legal meaning,
23 appears in the latest issue of *Dictionaries*, the academic journal of the Dictionary
24 Society of North America.

25 6. This report is based on my professional knowledge and expertise, and
26 on my research using accepted scientific linguistic methodology in the field of
27 Corpus Linguistics, the analysis of large digitized corpora consisting of many
28 millions of words.

7. I have been retained by the California Department of Justice to provide expert opinion and testimony regarding Corpus Linguistics research. I am being compensated at a rate of \$350 per hour.

OPINIONS

I. SUMMARY OF OPINIONS

8. Historical evidence from a number of large textual databases, or corpora, shows that during the Founding Era and the Reconstruction Era, *arms* is used as a general term for weapons (typically swords, knives, rifles, and pistols), but *arms* does not include ammunition, ammunition containers, flints, scabbards, holsters, armor, or shields. Nor does *arms* refer to *parts* of weapons, for example the trigger of a gun, the hilt of a sword, the cartridge box or magazine that holds the bullets. Instead, when this additional equipment is mentioned, we find phrases like *arms and ammunition*; *arms and accoutrements*; or *arms, ammunition, and accoutrements*. A phrase like *arms and accoutrements* is frequently used in military contexts to distinguish weaponry from the rest of a soldier's or militia member's kit, or equipment. For example, militia requirements often specify that soldiers have certain *arms* (pistols, swords, rifles, according to their rank) as well as certain *accoutrements* or equipment (including horses, saddles, cartridge cases or boxes, scabbards, flints, and so on). When the term *accoutrements* occurs alone, as in *the accoutrements of a soldier*, it may include both arms and accessories. But when the word *arms* occurs alone, as it does in the Second Amendment, for example, it does not include these accessories. And when *arms and accoutrements* occurs as a phrase, there is a clear distinction made between weapons and the soldier's accessories.

9. Militia regulations in the Founding Era often specified the types of arms required for officers and troops (for example, pistols and/or swords for the officers; rifles for the lower ranks). And they often specified, separately, the

1 different accessories that officers and the rank and file soldiers were also required
2 to have.

3 10. I have found no lexical evidence that repeater air guns were used as
4 military weapons in England or America in the Founding Era, or that they were
5 used as weapons of personal self-defense at that time.

6 **II. THEORY AND METHODOLOGY**

7 11. Corpus linguistics as a field developed in the late 1960s, when scholars
8 began using computer programs to analyze large bodies of digitized text. Initial
9 work in corpus linguistics did not typically involve legal issues. Literary scholars
10 developed computerized concordances to the works of Shakespeare, Milton, and
11 other major English writers. Scholars plotted the frequency of words and phrases in
12 order to develop a picture of an author's style, and to determine authorship of a
13 particular work when the provenance was in doubt. Soon, in addition to solving
14 literary mysteries, the methodologies developed by corpus linguists were
15 successfully applied in a number of criminal cases in the U.S. and in England
16 involving, for example, the authorship of a ransom note or an email.
17 Lexicographers, who began compiling large analog databases of text in the late 19th
18 century, began to digitize their libraries of paper data and to add to that material,
19 assembling computerized databases of historical and contemporary text and, more
20 recently, of spoken language as well, in order to arrive at more precise definitions
21 of the multiple senses of words and phrases. As a graduate student at the
22 University of Michigan in 1970, I coded analog texts from the *Oxford English*
23 *Dictionary* files to help build the computerized database for the Dictionary of Early
24 Modern English, the period from 1500–1800 that is particularly relevant to the
25 language of the Founding Era. Today, major dictionaries like the *Oxford English*
26 *Dictionary* and the Merriam-Webster suite of dictionaries rely on public databases
27 of oral and written language, as well as their own proprietary databases, in order to
28 revise older definitions and to track the spread of new words and meanings. The

1 major dictionary makers of Europe use similar databases in their own work.

2 12. Over the past twenty years, Legal Corpus Linguistics (LCL) has
3 developed as a subset of Corpus Linguistics. LCL involves the analysis of digitized
4 corpora of current and historical English to establish meaning—often referred to as
5 Original Public Meaning (OPM)—in statutes and constitutional texts. The promise
6 of LCL attracted jurists as well as scholars with a specific interest in language and
7 law. In *Muscarello v. United States* (524 U.S. 125 1998), a case which held that “a
8 person who knowingly possesses and conveys firearms in a vehicle, including in its
9 glove compartment or truck, can be deemed to be within the scope of the statutory
10 phrase ‘carries a firearm,’” Justice Breyer searched two computerized newspaper
11 databases (Lexis/Nexis for the *New York Times* and Westlaw for “US News”) to
12 clarify the meaning of the words *carry*, *vehicle*, and *weapon*. In her dissent, Justice
13 Ginsburg expressed skepticism that either dictionary evidence, or Justice Breyer’s
14 innovative newspaper searches, were useful in determining what Congress intended
15 by the verb *carry* in the law in question. Her critique did not deter courts from
16 performing other computerized data searches to determine legal meaning. In 2012,
17 Judge Richard Posner, then Chief Judge of the Seventh Circuit, was perhaps the
18 first jurist to use a general internet search in order to determine a word’s meaning in
19 a statute. Not satisfied with the dictionary definition that the government relied on
20 in the case before him, Judge Posner ran a Google search to confirm that the word
21 *harbor* in the Immigration Act of 1917 does not mean ‘shelter,’ as the government
22 claimed, but rather ‘hide, conceal from view,’ as he felt it must mean in the context
23 of the statute (*United States v. Costello*, No. 11-2917 [7th Cir. 2012]). Subsequent
24 research by trained corpus linguists pointed out that a more-structured internet
25 search revealed that *harbor* can indeed mean ‘provide shelter’ as well as the
26 narrower sense, ‘hide someone from the authorities.’ But in the context of the
27 version of the Immigration Act current at the time of Costello’s conviction
28 (8 U.S.C. § 1324 (a)(1)(B)(ii); 18 U.S.C. § 3571(b)(3), *harbor* appears alongside

1 other terms involving secret, illegal activity, and so even though Gries and Slocum,
2 using more rigorous parameters, showed that Judge Posner’s Google search may
3 have been flawed (Stefan Th. Gries and Brian G. Slocum, “Ordinary Meaning and
4 Corpus Linguistics,” 2017 *BYU L. Rev.* 1417 (2018): 1417–71), his understanding
5 of the word *in context* seems clearly to be correct.

6 13. More principled, scientific database searches soon followed. In 2018,
7 Justice Thomas Lee of the Utah Supreme Court, a long-time champion of corpus
8 linguistics, together with the legal scholar Stephen Mouritsen, summarized the
9 latest research in corpus linguistics and LCL as a way to determine ordinary
10 meaning, and more specifically, OPM, with more clarity (Thomas Lee and Stephen
11 Mouritsen, “Judging Ordinary Meaning,” *Yale Law Journal* 127(2018): 788–879).
12 Jurists over the past few years have found that in several cases, LCL proves more
13 useful than the period dictionaries (for example, the dictionaries of Samuel Johnson
14 and Noah Webster) that courts have often relied on to determine historical meaning.
15 LCL often supplements the historical interpretations found in older dictionaries and
16 in the *Oxford English Dictionary*, as well, allowing a more precise interpretation of
17 historical text data.

18 14. In addition to the publication of several significant law review articles
19 by experts in the field of corpus linguistics, there have been several conferences on
20 Legal Corpus Linguistics in the past few years, and a number of continuing-
21 education seminars on LCL are now offered for judges and lawyers. As a result,
22 Corpus Linguistics has drawn increased attention from the courts, including recent
23 mentions in decisions in the Sixth, Seventh, and Ninth Circuits, as well as a
24 comment by Justice Alito in his concurrence in *Facebook v. Duguid* (19-511 2021),
25 where he suggested that LCL may one day provide a useful alternative to the
26 canons of interpretation. Over the past decade, LCL has become an important tool
27 in helping to determine original public meaning when such meaning is in doubt.

28 15. Several large databases have come online in the past few years that

1 facilitate LCL research. They have proved invaluable to me in compiling this
2 Report. Brigham Young University's Center for Law and Corpus Linguistics hosts
3 the Corpus of Founding Era American English (COFEA), with more than 126,000
4 texts, comprising close to 137 million words and covering the years 1760–1799.
5 BYU's Corpus of Early Modern English (COEME), with data from 1475–1800,
6 contains over 40,000 texts and 1.1 billion words. For the nineteenth century, the
7 Corpus of Historical American English (COHA), initially developed at BYU but
8 now independent of that institution, currently contains 475 million words of text
9 from 1820–2020. The size of these databases continues to grow as more works are
10 digitized, coded, and added to the corpora.

11 16. Critics of LCL have complained that databases like COFEA and
12 COEME contain only texts written by “elites,” whose language may differ from
13 that of “ordinary people” who do not write at all, or who for various reasons do not
14 write texts likely to be included in the available corpora. It is certainly the case that
15 many printed books and periodicals, along with documents like the Constitution, its
16 amendments, and state and federal statutes, tend to be written by educated
17 specialists and professional writers, and although ordinary people are expected to
18 understand the language of the Constitution, the Declaration of Independence, and
19 other founding documents, as well as the laws that govern the nation, such texts
20 typically require specialized knowledge. A reading-difficulty formula like the
21 commonly-used Flesch-Kincaid scale suggests that the Declaration of
22 Independence and the Constitution require a fifteenth-grade reading level, while
23 according to one comprehensive study, *Adult Literacy in America* (US Department
24 of Education, 1993), the average American today tends to have a seventh-grade
25 reading level.

26 17. In order to counter any “elite” bias that may be found in databases like
27 COFEA, COEME, and COHA, I rely as well on five digitized newspaper databases
28 covering the period 1750–1900, focusing for this report on the Founding Era and on

1 the period of Reconstruction after the passage of the Fourteenth Amendment.
2 Because of changes in print technology and the spread of literacy, Founding Era
3 newspapers differed from the newspapers of the post-Civil War era. Print
4 technology remained relatively static between the 1450s, when printing presses first
5 appeared in Europe, and the early 19th century, when the Industrial Revolution
6 drastically changed printing methods. The first printing press was adapted by
7 Gutenberg from the design of the traditional wine press, and printing was a slow
8 and labor-intensive process. As a result, newspapers in the founding era were
9 small, averaging four to eight pages. Publication was less frequent as well. Papers
10 tended to appear weekly or semi-weekly, rather than daily. Even so, newspapers in
11 the Founding Era and later, during Reconstruction, provided average Americans
12 with their principal access to all the critical events and documents of their time,
13 along with coverage of local and international news. Although newspaper
14 subscribers tended to be “elites,” newspaper content was widely shared by word-of-
15 mouth: ultimately, most Americans in the Founding Era, including those who
16 would be classified as illiterate or poorly educated by today’s standards, got their
17 news from newspapers.

18 18. The invention of the steam engine in the 19th century, along with
19 growth of paper mills that facilitated the production from wood pulp of large,
20 inexpensive rolls of newsprint, led to a revolution in print technology. This, in turn,
21 led to an explosion in the size of newspapers and the frequency of their publication,
22 to the point where, at their height, papers in big cities were publishing several
23 editions a day. This growth in newspapers, along with a substantial increase in
24 periodical and book production, paralleled a growth in literacy in the US and
25 Europe that tracked the industrial revolution and the subsequent rise in universal
26 public education. By the end of the Civil War, there were more readers in America
27 than ever, and they demanded more reading material.

28 19. As for the question of “elites,” newspapers of the 18th and 19th

1 centuries were the principal means of communicating news and information. As
2 such, they embodied much of the language of the “ordinary people” who read them.
3 These early newspapers also provide researchers with more data for the 19th
4 century than a corpus like COHA, which covers the same period but tends to focus
5 on literary and specialized texts rather than material for the general reader.

6 20. Since the 1960s, database compilers have been able to track
7 contemporary spoken English more successfully, though for obvious reasons, none
8 of the databases for the Founding Era and for the post-Civil War period cover the
9 spoken language of Americans. Although scholars can reconstruct some of that
10 oral language, we are always doing so through the lens of print versions purporting
11 to represent or comment on ordinary speech.

12 21. The newspaper databases that I have examined are Readex Historical
13 American Newspapers; Chronicling America (newspapers digitized by the Library
14 of Congress); the British Newspaper Archive (a service of the British Library); and
15 two private subscription services, newspapers.com and newspaperarchive.com. For
16 this report, newspapers.com provides the most-complete picture of the language of
17 the Founding Era newspapers as well as the ordinary language of the later 19th
18 century.

19 22. All the databases contain some duplicates. COFEA and COEME
20 digitize multiple editions of the same work; and the newspaper databases contain a
21 number of duplicate stories because, particularly in the period of newspaper growth
22 during the 19th century—in an age before the wire services and syndication
23 appeared, and before the larger papers began to set up news bureaus in key areas
24 around the country and around the world—newspapers routinely printed each
25 other’s stories, sometimes acknowledging their source and sometimes not. Still, the
26 databases often offer more insight into the meaning of words and phrases than
27 simply going to a dictionary. Jurists from Learned Hand and Felix Frankfurter to
28 Frank Easterbrook and Richard Posner have warned their colleagues not to make a

1 fortress of the dictionary. The corpora are by necessity incomplete. LCL doesn't
2 replace dictionary look-ups, but it does provide an important supplement to them.

3 **III. THE MEANING OF ARMS AND ACCOUTREMENTS IN THE DATABASES**

4 23. I was asked to look at the meaning of *arms* and *accoutrements* as used
5 individually, along with the phrase *arms and accoutrements*, current in the
6 Founding Era and during the period immediately following the adoption of the
7 Fourteenth Amendment.

8 24. In the eighteenth and nineteenth centuries, *magazine* was a word that
9 meant 'storehouse, depot.' A *magazine* was a place, often a building or warehouse,
10 to store goods and supplies. When used in a military sense, a *magazine* was a
11 building designated for storing gunpowder, and as such, it was subject to strict
12 regulation. Because gunpowder was an explosive substance, some towns banned or
13 heavily regulated the storage of gunpowder within city limits. The word *magazine*
14 was not typically used to refer to the compartment of a gun containing bullets until
15 late in the nineteenth century. Although the term *magazine* appears in the phrase
16 *magazine wind gun* in 1744, that usage is marked as "rare" by the Oxford English
17 Dictionary, which also marks the phrase *magazine wind gun* as "obsolete." In its
18 separate, main entry for *magazine*, the OED gives the earliest use of *magazine* to
19 mean a bullet storage container as 1888, and the term remained relatively rare until
20 the 1920s. Before that time, bullets were kept in *cartridge boxes* or *cartridge*
21 *cases*, and these bullet storage containers were part of the general category of
22 military *accoutrements*, not *arms*.

23 25. The data on *accoutrements* suggest that parts of firearms such as
24 magazines are not *arms*, but *accoutrements*, the ancillary equipment associated with
25 soldiering, or service in the military. *Cartridges*, *cartridge boxes* and later,
26 *detachable magazines*, are not arms in and of themselves.

27 26. The OED, the standard dictionary of the English language compiled on
28 historical principles, defines *accoutrements* as, "items of apparel; (more generally)

1 additional pieces of dress or equipment, trappings; (Military) the outfit of a soldier
2 other than weapons and garments.” [OED online, s.v. *accoutrement*; the *OED* and
3 the corpus evidence makes clear that *accoutrements* typically occurs as a plural].

4 27. *Accoutrements* in its non-military sense typically refers to specialized
5 clothing—that associated with certain professions (for example, clerical robes) or
6 suitable for fancy-dress occasions (ball gowns, tuxes, and other formal attire). But
7 the military sense of *accoutrements* generally refers not to uniforms or to weaponry,
8 but to other military accessories worn or carried by soldiers. The example given by
9 the OED to illustrate this second, military, sense is from the Duke of Wellington’s
10 dispatches in 1813: “In order to collect the wounded and their arms and
11 accoutrements.” Here Wellington, widely recognized as a consummate soldier, and
12 who would soon defeat Napoleon at the Battle of Waterloo in 1815, makes a clear
13 distinction between *arms* and *accoutrements*.

14 28. The term *accoutrement-maker*, though not defined separately by the
15 OED, is illustrated with examples referring to a manufacturer of military
16 accessories rather than arms; and the term *accoutrement shop* has this 1831
17 example where guns and accoutrements are differentiated: “The crowd was so
18 great in the Rue de Richelieu, . . . especially about the gunsmiths and accoutrement
19 shops in the vicinity of the Palais Royal.” [*United Service Jnl.* i. 325]

20 29. The OED definitions are instructive. But in order to determine more
21 specifically what the term *accoutrements* refers to, I consulted two digitized
22 historical databases, or corpora. A COFEA database search for the occurrence
23 *accoutrements* within 6 words of *arms* returned 873 hits (including a small number
24 of duplicates). A similar search of COEME returned 126 hits, the earliest from
25 1656. I determined that the two search terms, *arms* and *accoutrements*, often appear
26 together as a single phrase, *arms and accoutrements*, typically in military contexts
27 having to do with an army or militia unit. *Accoutrements* often occurs in a list
28 alongside, but separate from, ammunition: *arms, accoutrements, (and) ammunition*,

1 though when *ammunition* is not listed separately, the term *accoutrements* will
2 generally include *ammunition*. *Accoutrements* sometimes occurs in a list alongside
3 *clothing*, suggesting it may not always include uniforms (this finding informs the
4 *OED* definition: military equipment other than arms and uniforms). But
5 occasionally, *accoutrements* may include items classified as part of a uniform
6 (influenced, most likely, by the general, nonmilitary sense of *accoutrements*, where
7 the term usually refers to clothing associated with particular professions or
8 activities). In sum, in the vast majority of examples, *accoutrements* functions as a
9 catch-all term for military equipment *separate* from, and not including, *arms*.

10 30. But English usage is never simple. As linguists often say, “all
11 grammars leak”—which is to say, there are always a few counterexamples in the
12 data. The existence of counterexamples does not invalidate the data or undercut an
13 interpretation: it simply shows that although the users of a language share a
14 common sense of what words and grammatical constructions mean, variation in
15 meaning and usage is a necessary aspect of all human language. It is not surprising,
16 then, that rarely, in COFEA, *accoutrements* does encompass *arms*, as it does in this
17 example:

18 A few years since, some boys, equipped in mock military
19 *accoutrements*, such as paper-caps, paper-belts, wooden swords,
20 &c. were beating up for recruits in Parliament-street, Boston. [*The American jest book*: Part II[-II], 1789; emphasis added; here military
accoutrements includes toy swords.]

21 31. This cite from 1776 refers to guns and *other* military accoutrements,
22 implying, too, that arms may be a subcategory of *accoutrements*:

23 [He] shall be provided with a fire arm and other military accoutrements
24 provided by the militia law.

25 32. But besides a handful of exceptions, in literally hundreds and hundreds
26 of cases, *arms* and *accoutrements* are treated as separate items of military gear.
27 Here are some typical examples from the Founding Era:
28

1 **1776:** Fire arms and accoutrements

2 **1780:** arms, ammunition, accoutrements, drums and fifes in
possession of the respective regiments.

3 **1795:** you will march . . . with arms and accoutrements in good order.
If any volunteer should want arms and ammunition, bring them
4 forward, and they shall be supplied as well as possible. [COEME;
the other examples in this list are from COFEA]

5 **1798:** To hold his powder and his ball, his gun, accoutrements
and all . . . [This example rhymes because it's from a poem,
6 indicating that the idiomatic phrase *arms and accoutrements* has
become part of the general language available not just to military
7 specialists but also to poets and novelists.]

8 33. A second COFEA search, for *accoutrements* alone, returned 1,235 hits.
9 COEME yields 771 hits. These searches add a number of non-military contexts,
10 where accoutrements refers to religious gear (robes, mitres, and so on) as well as
11 other sorts of fancy or special clothing. These non-military examples do not
12 reference weapons, ammunition, or other military equipment.

13 34. I supplemented my COFEA search with a search of the newspaper
14 database, newspapers.com, for the Founding Era period, 1750–1800. The
15 newspaper databases do not permit the kind of collocate searches that COFEA,
16 COEME, and COHA allow. Entering two search terms returns results in which
17 either one or both terms occur on the same page, though not necessarily in the same
18 sentence, or even in the same article, and not necessarily as linked terms. There are
19 1,392 hits for *accoutrements*. There are 692 matches for the exact phrase *arms and*
20 *accoutrements*.

21 35. Here's a mid-18th century British example from the newspapers.com
22 corpus where *arms* and *accoutrements* are separate categories, as is *ammunition*:
23 “This Militia shall receive their Arms, Accoutrements, and Ammunition from the
24 Ordnance.” *Derby Mercury*, 1756.

25 36. Similarly, there's this “ploughshares into swords” example of a
26 Cambridge University library to be converted to military use: “[T]he new Building
27 intended for a publick Library . . . may be converted into a Barrack, and be supplied
28

1 with Provisions, Arms, and Accoutrements, at the Expence of the University.”
2 *Jackson's Oxford Journal* 1756.

3 37. A search of the Readex database of America’s Historical Newspapers
4 returns 3,103 hits from 1750–1800; and 2,036 hits from 1868–1880. This early
5 example from the colonial period appeared in the *Boston Evening Post* in 1750. It
6 distinguishes *arms* from uniforms, accoutrements, and other military equipment:
7 “All Gentlemen Volunteers [in Nova Scotia] . . . shall be completely Cloathed in
8 blue Broad Cloth, receive Arms, Accoutrements, Provisions, and all other Things
9 necessary for a Gentleman Ranger.”

10 38. This cite from the *Pittsburgh Gazette* in 1789 reflects a clear sense that
11 arms and accoutrements are distinct categories in the new nation as well: “The
12 militia . . . must be considered as the palladium of our security . . . The formation
13 and discipline of the militia of the continent should be absolutely uniform; and that
14 the same species of arms, accoutrements, and military apparatus, should be
15 introduced in every part of the United States.”

16 39. The text of a bill in Congress to establish a uniform militia appeared in
17 the *New York Journal*, in 1790. It confirms the Founding-Era sense that *arms*,
18 *ammunition*, and *accoutrements* make up distinct and separate elements of a
19 soldier’s kit: “There shall be appointed an adjutant general for each state . . . whose
20 duty it shall be to . . . report[] the actual situation of their arms, accoutrements, and
21 ammunition. . . Every non-commissioned officer or private . . . for appearing at
22 such meeting or rendezvous without his arms, ammunition, or accoutrements, as
23 directed by this act, shall pay the sum of twenty-five cents.”

24 40. And this cite from 1868 clearly distinguishes what counts as arms, and
25 what counts, separately, as accoutrements: “At Watertown Arsenal, Massachusetts
26 . . . the following Arms, &c., will be sold: 10,699 rifled and smooth-bore Muskets . .
27 . ; 261 Carbines . . . ; 305 Sabres . . . ; lot of cavalry accoutrements, consisting of
28 Bayonet Scabbards, Cap Pouches, Cartridge Boxes, Gun Slings, Waist Belts, &c.”

1 *Daily Morning Chronicle* (Washington, DC).

2 41. The newspaper data parallels that of COFEA: the phrase *arms and*
3 *accoutrements* is almost always military. The phrase sometimes occurs alongside
4 *ammunition* as a separate list item. *Accoutrements*, when it appears alone, is a more
5 general term, used both for military and other gear, though in non-military contexts
6 it is more directed toward clothing rather than ‘equipment’ (priests’ robes,
7 ministerial garb, fancy ball gowns, badges of office), as is also indicated in the
8 OED citations. In non-military contexts, *accoutrements* carries the suggestion of
9 ceremonial gear, and less commonly, nonmilitary tools of the trade.

10 42. It’s clear that *arms and accoutrements* was, during the 18th and 19th
11 centuries, a common military phrase, in both England and America. English often
12 yokes terms commonly found together into idiomatic pairings, sometimes called
13 binomials, like *bacon and eggs*, *salt and pepper*, or, in a legal context, *assault and*
14 *battery* or *breaking and entering*. Such pairs take on the characteristics of a
15 formula, and often appear in the same order (this order may be dictated by logical
16 succession of events, or it may be random). *Eggs and bacon* is rarer than *bacon*
17 *and eggs*. And it would be unusual to find *battery and assault*. Such ordered pairs
18 are called “irreversible binomials,” though there’s nothing but custom (as in *salt*
19 *and pepper*) and sometimes logic (as in *breaking and entering*) to prevent anyone
20 from reversing the order.

21 43. The word *accoutrements* typically occurs in a list after *arms* (more
22 rarely, it may occur before *arms* as well), and it is typically a separate category
23 from *arms* (though not always, as the above examples show).

24 44. There are over 47,000 citations in newspapers.com for *arms* or
25 *accoutrements* in the period 1868–1900, and 15,799 cites for the exact phrase *arms*
26 *and accoutrements*. Examining a selection of the 15,799 citations of the phrase
27 confirms that both in England and the US, *arms* and *accoutrements* are separate
28 categories. Here is one example from Gloucestershire, in England, dated 1868: “[A]

1 letter was received from the Home Secretary, pointing out the danger of permitting
2 an accumulation of arms and accoutrements to take place in prisons, and requesting,
3 if there were any arms or munitions of war stored in the prison, that they should be
4 removed to the nearest military depot” *Gloucestershire Chronicle* (Gloucester,
5 England), 1868.

6 45. A similar cite from Iowa in 1868: “Persons having in their possession
7 any arms, accoutrements or ammunition belonging to the State, are requested to
8 return the same at once to the Adjutant General, as proper places have been
9 provided by the State for the safe keeping of all such property” *Cedar Falls Gazette*
10 (Cedar Falls, Iowa), 1868.

11 46. And this, from Stroudsburg, PA, also 1868: “More than half of the
12 Seventh Cavalry (Custer’s) decamped with their horses, arms, and accoutrements,
13 and probably made their way to the gold regions of Colorado and Montana,” *The*
14 *Jeffersonian* (Stroudsburg, Pennsylvania), 1868.

15 47. The circa-1868 data confirmed the Founding Era data that
16 *accoutrements* is primarily a military term, and that when *accoutrements* co-occurs
17 with *arms*, the terms refer to separate categories of equipment.

18 48. One final note on *accoutrements*. The U.S. Supreme Court’s recent
19 decision in *New York State Rifle and Pistol Association v. Bruen* (No. 20-843,
20 2022) references *North Carolina v. Huntley* (25 N.C. 418, 1843), a decision by the
21 North Carolina Supreme Court affirming Huntley’s conviction for carrying a
22 shotgun illegally “to the terror of the people,” as forbidden by the Statute of
23 Northampton in 1328. In that decision, the Court states, “A gun is an ‘unusual
24 weapon,’ wherewith to be armed and clad. No man amongst us carries it about with
25 him, as one of his everyday accoutrements—as a part of his dress.”

26 49. In the citation above, *accoutrements* does not refer to weaponry, but to
27 the more general category of ‘everyday attire, or clothing.’ the Court is saying that
28 it may be normal to wear a shirt, or a belt, or shoes, but it’s not normal to wear a

1 gun in North Carolina in 1843. It's legal—the Court agrees—to carry a gun for any
2 lawful purpose, “either of business or amusement”—but it's not *normal* or typical
3 to do so. In affirming Huntley's conviction, the Court noted that his purpose in
4 carrying a shotgun was not a legal one.

5 **IV. SOME HISTORICAL NOTES ON THE USE OF THE WORDS *MAGAZINE* AND**
6 ***MAGAZINE WIND GUN*, AND ON REPEATER AIR GUNS IN THE FOUNDING**
7 **ERA**

8 50. Today a gun magazine refers to a bullet container for a gun. That use
9 of *magazine* began to appear in the mid-nineteenth century and became common by
10 the early twentieth. According to the OED, in the 18th and early 19th centuries, the
11 word *magazine* referred generally to ‘a storehouse,’ and in military contexts it
12 referred specifically to a storehouse for gunpowder. (The sense of ‘storehouse’ also
13 led to the use of *magazine* to refer by the 18th century to a print publication
14 containing a variety of articles, and its sense of ‘depot, warehouse,’ is cognate with
15 the French word *magasin*, ‘a shop or store’).

16 51. Although most uses of the word *magazine* still refer to printed
17 periodicals, during the 19th century, one sense of the term *magazine* narrows,
18 referring more and more to an ‘ammunition container,’ a primary sense of the word
19 in reference to firearms today. The OED defines *magazine*, sense IV b, as “A
20 container or (detachable) receptacle in a repeating rifle, machine-gun, etc.,
21 containing a supply of cartridges which are fed automatically to the breech,” with
22 the earliest citation in this sense from 1868, the time period that marks the
23 ratification of the Fourteenth Amendment and so is relevant to this LCL analysis.

24 52. However, as with a very few instances of *accoutrements* including
25 *arms*, there are an extremely small number of early counterexamples where
26 *magazine* refers to the bullet compartment of a gun. The term “magazine wind
27 gun” first appears in 1744 as the name of an air gun invented by one L. Colbe. The
28 common, single-shot wind gun, or air gun, used compressed air rather than ignited
gunpowder to propel a ball, and was much quieter than a traditional gun. Although

1 the air gun did not require powder or a match, the user had to re-charge the
2 compressed air cylinder once the air had been expended. The writer Oliver
3 Goldsmith found air guns to be useful for experiments in physics, adding, “THIS,
4 however, is but an instrument of curiosity, and sometimes of mischief.” [Oliver
5 Goldsmith, *A survey of experimental philosophy, considered in its present state of*
6 *improvement*, 1776.] This newspaper story reports that the scientist Joseph
7 Priestley was injured by an accidental discharge of an air gun: “We hear from
8 Birmingham, that the celebrated Dr Priestley, in a late trial of some experiments
9 with an air gun, was badly wounded by an accidental discharge of it; the ball with
10 which it was loaded, passing thro’ one of his hands, and shattering it to pieces.”
11 [*The Leeds Intelligencer and Yorkshire General Advertiser*, June 5, 1781, p. 3.]

12 53. A number of newspaper references suggest that its quietness made the
13 air gun popular with criminals, and many references to air guns refer either to
14 accidental discharges or to criminal assaults (for example, numerous newspaper
15 accounts in 1785 suggested that the weapon which broke a window in the carriage
16 of King George III was an air gun).

17 54. Air guns typically fired a single shot. However, there are references to
18 approximately eight inventors between 1744 and 1820 who built air guns capable of
19 firing anywhere from 9 to 50 balls without reloading the ammunition or recharging
20 the compressed-air cylinder. Lexical evidence suggests almost all of these repeater
21 air guns were experimental models rather than guns available for military or
22 civilian use.

23 55. The OED dates the term *magazine wind-gun* to 1744 in a reference to
24 an air gun capable of firing more than one shot without reloading. *Magazine wind-*
25 *gun* is the term used by its inventor, a man named L. Colbe, who also uses the term
26 *magazine gun* for that device. In an entry separate from its entry for *magazine*, the
27 OED marks the usage of both “magazine wind gun” and “magazine gun” as “rare”
28 and “obsolete”:

1 †magazine wind-gun *n. Obsolete rare* a type of wind-gun fitted with
2 a magazine of bullets. 1744 J. T. Desaguliers *Course Exper. Philos.* II.
3 399 An ingenious Workman call'd L. Colbe has very much improv'd
4 it [*sc.* the old Wind-Gun], by making it a Magazine Wind-Gun; so that
5 10 Bullets are so lodg'd in a Cavity..that they may be..successively
6 shot. [Oxford English Dictionary Online, s.v. magazine wind-gun.]

56. The OED citation is from John Theophilus Desaguliers, *A Course of*
6 *experimental philosophy*. London, 1744, vol. II:399–402. Desaguliers, a
7 “philosopher” or scientist who specialized in mechanics and hydraulics, was a
8 member of the Royal Society and an assistant to Isaac Newton. In his treatise, he
9 offers an elaborate description of the common, single-shot wind gun, more typically
10 referred to as an air gun, along with a three-page description of Colbe’s so-called
11 “Magazine Wind-Gun,” accompanied by a detailed drawing of the mechanism. I
12 have found no biographical information about L. Colbe, inventor of the gun, and
13 there is no lexical evidence that Colbe made more than one such gun, or if he did,
14 that it was produced in any significant numbers. There is no lexical evidence that
15 the other repeater air guns or magazine wind guns were ever more than a curiosity
16 until workable models of what we now call machine guns, which used conventional
17 gunpowder and bullets, not compressed air and balls, were produced during and
18 after the Civil War.

57. As further confirmation that the *magazine wind gun* was an anomalous
19 and uncommon term, the OED definition of *magazine*, updated most-recently in
20 2022, gives the earliest date of the sense of the word as a bullet-container as 1888.
21 The corpus evidence confirms that the magazine wind gun is correctly dated by
22 OED as 1744, and I have found references to *magazine air guns* in the 1790s and
23 early 1800s, but this usage of the word remained rare. “Magazine wind-gun” and
24 “magazine gun” do not appear in the COEME or COFEA corpora. I have found no
25 information in the corpora on the availability or popularity of such guns, but the
26 sparse lexical data suggests they were not in common use. In addition, although
27 Desaguliers describes the mechanism of the wind gun as “not to be easily put out of
28

1 order,” his description and accompanying drawing shows that it is in fact quite
2 complex, not something that could be repaired by a soldier or non-specialist
3 civilian. A small number of references to later repeater wind guns indicate they
4 were made by clockmakers and other highly-skilled artists or artisans, and it is
5 reasonable to assume that they too would require a specialist knowledge and
6 specialist tools to repair the mechanism. There is no indication in the lexical
7 evidence that repeater air guns were ever mass produced or publicly available in the
8 Founding Era (1776–1820). Several of the citations I found treat these guns as
9 curiosities and their owners charge a small fee to anyone interested in looking at
10 them (and in one case, trying the gun out).

11 58. Here is what Desaguliers says: “An ingenious Workman called L.
12 Colbe, has very much improved it [the air gun, or wind gun as Desaguliers calls it],
13 by making it a Magazine Wind-Gun; so that 10 Bullets are so lodg’d in a Cavity
14 near the Place of Discharge, that they may be drawn into the shooting Barrel, and
15 successively shot so fast as to be of the same use as the same Number of Guns; the
16 only Motion requir’d (when the Air has been injected before-hand) being the
17 shutting and opening of the Hammer, and cocking and pulling the Trigger. . . . The
18 Excellency of the Magazine-Gun, as he calls it; the rest being like another Wind-
19 Gun.” [Vol II, p. 399; following this are two pages describing the mechanism in
20 painstaking detail.]

21 59. Desaguliers then continues:

22 The 10 or 11 very effectual Shot may be made one after another,
23 without new injection of Air. . . . The Magazine . . . receives the
24 Bullets at its Opening D, over which a Plate X comes to Shut them in;
25 and they are kept in readiness to be brought into the shooting Barrel
26 by the Motion of the Hammer in the expeditious manner describ’d.
27 This is far preferable to any of the old Wind-Guns; because t’ho some
28 of them will hold Air for several Discharges, the Bullet must be put
down the Mouth of the Barrel every time, which cannot be done soon;
but in Colbe’s Gun the Bullet is brought into the Barrel in a Moment. .
. . .; and the whole so well executed as not to be easily put out of order.
For these Reasons it may be look’d upon as the best Defence against

1 Highway-men, or Robbers that Travellers are aware of because when
2 they have cause to suspect them, they may make five or six
3 Discharges before a Thief can come within Pistol-Shot.” [Pp. 401–
402; in this transcription I have modernized the long *f* as the letter *s* to
make the passage easier to read for the modern reader.]

4
5 Despite Desaguliers’ optimism, there is no evidence in the corpora that Colbe’s
6 “machine wind gun” was ever used either as a military weapon or as a weapon of
7 self-defense.

8 60. There are several other references in newspaper databases to repeater
9 air guns in the period 1776–1820. They too seem to be rare inventions or
10 curiosities, not weapons commonly available to the military or the American or
11 English public:

12 1783 “Vienna. A watchmaker has invented an Air Gun, which,
13 without recharging, fires 15 times successively. A corps of Hunters
14 are to be armed with these guns.” *The Newcastle Weekly Courant*
(England), May 10, 1783, p. 3. The writer does not use the term
magazine to describe this gun, and there is no follow-up to indicate
whether the corps of Viennese hunters did employ such a weapon.

15 1784 “An artist of this town [Birmingham, Eng; the artist is also
16 identified as a compass maker] has lately invented a magazine gun,
17 that will discharge 45 bullets separately in two minutes and a half,
each bullet would kill an ox at 40 yards distance; it is only charged
once, and aim is taken with more certainty than with the fowling
18 piece.” *New York Packet and American Advertiser* (New York, NY),
Aug. 5, 1784.

19 1792 A number of American newspapers report on the invention by a
20 man from Rhode Island of a repeating air gun capable of firing 20
21 times without reloading. Here is one: “A person in Rhode Island has
invented an Air-gun, which can be discharged, to do execution, 20
22 times, each time it is loaded.—As nothing is cheaper, and easier to be
transferred, than the ammunition for the above pieces; and as saving
much expense, they recommend themselves strongly to the Secretary
23 at War, to be used in the approaching campaign against the Indians.”
National Intelligencer: National Gazette, April 26, 1792, p. 3.

24
25 61. These articles do not use the word *magazine* in reference to the gun,
26 and there is no indication that the Secretary of War acted on the suggestion in the
27 article from the *National Intelligencer*. In fact, the following advertisement
28 suggests that the repeater air gun in question was treated as a curiosity to be

1 admired in a museum: “An air-gun, made by a young man, a native of Rhode-
2 Island, but now resident in this city [New York], and which has been purchased by
3 the subscriber, with a view eventually to make it the property of the American
4 museum but wishes to reimburse himself in the following manner, viz. He will
5 exhibit it to the examination of all persons desirous of viewing it, and of
6 discharging a shot, for which they shall pay six-pence. This gun, when properly
7 filled with air, will do execution twenty times, without renewing the charge, and for
8 several times will send a ball thro’ an inch board, at the distance of sixty yards, to
9 be seen at the subscribers, No. 13 Maiden Lane, every day in the week, from 10 to
10 12 in the forenoon, and from 3 to 5 in the afternoon, Tuesday and Friday afternoons
11 excepted, at which time it may be seen at the Museum. Gardiner Baker, Keeper of
12 the Museum.” *New York Daily Advertiser*, Feb. 9, 1792.

13 62. There is a report in 1796 of German troops being issued a repeater air
14 gun, invented in the reign of Joseph II, of the Holy Roman Empire (*reg.* 1765–
15 1790): “This carabine, lighter and smaller than the common ones, is composed of
16 two barrels, the smallest of which contains 25 balls: and by a slight movement, they
17 pass from the one to the other; which ball, by lowering the firelock, goes off with
18 the same rapidity and carries further than if fired with powder, without the least
19 noise, and that as often as a hundred times alternately, during the space of 8 or 10
20 minutes; after which, the reservoir being exhausted, it requires to pump in fresh air,
21 which takes up at most, 16 minutes.” *The Independent Gazetteer* (Philadelphia),
22 Aug 6, 1796, p. 1. The article adds that a sample weapon was given to the Prince of
23 Wales, and the writer suggests such guns would be useful at sea, since they are not
24 affected by dampness. But there is no indication in the corpora that the Royal Navy
25 ever considered such a weapon. The article does not use the word *magazine* in
26 connection with the weapon.

27 63. Here is another instance, in 1797, referring to a repeater air gun: “An
28 Air GUN has been constructed by Messrs. Darlings and Wilkinson, of Cumberland,

1 Rhode Island, upon a plan entirely new. It can be discharged twelve times with
2 once loading, and will do execution with great exactness, at fifty yards distance.”
3 *Columbian Centinel* (Boston), June 21, 1797. Again, there is no use of *magazine* in
4 the article.

5 64. In 1801, multiple newspapers run the story of a repeater air gun
6 invented by a man known as Girardami, identified as a “peasant” and watchmaker
7 and variously referred to in gun history articles as Girandoni or Girardoni (those
8 spellings do not appear in the corpora): “Girardami, a Tyrolese peasant, and self-
9 taught artist, has invented an air-gun, which may be discharged fifty times without
10 pumping again. The first twenty shots penetrate through a door at an uncommon
11 distance. Girardami makes these air-guns himself, and likewise very good wooden
12 watches.” *The Caledonian Mercury* (Edinburgh), Mar. 2, 1801, p. 2. There is no
13 use of *magazine* in these articles.

14 65. And in 1802 we find this reference to an exhibitor charging admission
15 to see repeater air gun: “The Newly-Invented Philosophical Air Gun That can be
16 used as Gun or Pistol, and discharge 20 balls with one loading of the globe [that is,
17 the compressed-air cylinder], unless the charge of air is let out at once. To be seen
18 at Mr. Wyant’s tavern, Market street, both night and day. Admittance one fourth of
19 a dollar.” *Telegraphe and Daily Advertiser* (Baltimore), March 17, 1802.

20 *Philosophical* in this sense is often used to refer to physicists experimenting with
21 air guns to measure air temperature, pressure, and volume, among other things (see,
22 for example, the work of Desaguliers and the experiments of Goldsmith and Boyle
23 mentioned above). And again, no use of *magazine*.

24 66. A brief ad appears in 1807 for an auction includes, among other items,
25 “an air gun in compleat order which, when loaded will discharge twenty five times
26 after being pumped.” *American Citizen* (New York, NY), May 28, 1807. No
27 mention of *magazine*.

28 67. There are several accounts that Lewis and Clark took a repeater air gun

1 on their expedition to the Pacific. Only one instance in the databases, in 1814,
2 alludes to that weapon, though the article itself has nothing to do with the
3 expedition. Instead, this letter to the newspaper, criticizing a politician for
4 repeating the same things he's been saying for years, suggests as well that the
5 Lewis and Clark repeater air gun was used not for hunting or warfare but rather to
6 dazzle the Indians that the explorers encountered with their "great medicine,"
7 thereby ensuring a peaceful encounter: "he [the politician in question], forthwith,
8 becomes a "great medicine," as the Shoshones called captain Lewis' air gun."
9 *National Advocate*, Mar. 23, 1814. There is no use of *magazine* in reference to the
10 weapon.

11 68. Here is another advertisement, from 1815, for "one magazine Gun,
12 when once loaded can be discharged ten times in a minute." *New York Gazette*,
13 Aug. 30, 1815. This is the third and last use of *magazine* to refer to a bullet holding
14 compartment of a gun before the mid-19th century.

15 69. Finally, there is an ad in 1819 for a French repeater air gun, for sale at
16 90 crowns: "which discharges 20 times before the air is expended." *Salem Gazette*
17 (Massachusetts), Feb. 5, 1819. There is mention of *magazine* in reference to the
18 gun.

19 70. Corpus data shows that *magazine gun* and *magazine air gun* are
20 extremely rare terms, occurring a mere three times in the corpora. In contrast, there
21 are approximately 1,200 references to the phrase "air gun" in the several databases
22 that I consulted. Subtracting an estimated 150 duplicates, that leaves about 1,050
23 references to a single-shot air gun. In contrast, subtracting estimated duplicates, I
24 found 12 references to repeater air guns. Two of these references suggest that they
25 would be useful weapons for the military; one recommends their use to hunters;
26 and, in one case, the writer speculates that the weapon would be useful for self-
27 defense. But for the most part, these early repeaters seem to be treated as
28 curiosities: marvels of engineering constructed by clockmakers or other skilled

1 artisans, items to be seen in a museum or exhibited at a tavern. There is no lexical
2 evidence that they were manufactured in quantity. Their mechanisms were
3 complex, requiring a clockmaker's skill to design, make, and repair. And it took
4 time to re-charge the air cylinder (one source suggests 16 minutes for one such
5 repeater air gun, which would render them suboptimal in battle situations). A
6 couple of entrepreneurs charged admission to view them, and in one case, to try
7 shooting the gun. The Lewis and Clark example seems to have been used to
8 "impress" potentially hostile Indians rather than as a weapon against them. It too
9 may have been a one-off. Furthermore, only three of the twelve references to
10 repeater air guns refer to the bullet container as a *magazine*, a further indication that
11 this usage is extremely rare.

12 71. With advances in the design and manufacture of guns and ammunition,
13 by the mid-nineteenth century, the term *magazine* starts to appear in the sense
14 'ammunition container' (replacing the earlier terms *cartridge box* or *cartridge*
15 *case*), not in air guns but in ones using gunpowder and bullets.

16 72. COFEA and COEME do not cover the period past 1800. COHA,
17 which does have 19th century coverage, turns up only a handful of uses of
18 *magazine* in collocation with bullets, guns, rifles, or weapons in the 1890s, and only
19 three such uses before 1820. Most COHA cites for *magazine* refer to print
20 magazines; a smaller number from 1820–1880 refer to gunpowder storehouses.
21 Searching the word *magazine* in newspapers.com results in more than 3.3 million
22 hits, the vast majority of them also referring to print journals. *Magazines* meaning
23 'devices for holding bullets' form only a very small subset of these citations. After
24 its appearance in the 1880s, it took some thirty to forty years for the 'bullet holder'
25 sense of the word *magazine* to become more common, and even then, text
26 references to ammunition magazines often appear, not in general discourse, but in
27 legislation restricting their size or use.

28 73. Most militia laws and regulations from the Founding Era specify

1 minimum requirements for soldiers' weapons, ammunition, and accoutrements.
2 Most laws regulating weapons in the mid-19th century restrict or ban specific kinds
3 of weapons, often enumerating them, sometimes in terms we find colorful today but
4 which were common at the time (Arkansas toothpicks, Bowie knives, slung shots,
5 swords in canes, pistols capable of being concealed in a pocket). Occasionally,
6 these laws further identified such weapons as those used by "brawlers," thieves,
7 robbers, or others bent on illegal activities. Other weapons restrictions follow the
8 English tradition of limiting possession of weapons by social class, nationality, or
9 race.

10 74. Although militia laws do specify weapons and other required
11 accoutrements or pieces of military equipment, including horses for the officers,
12 those laws that prohibit certain kinds of weapons during the two critical periods
13 (1789–1810; 1868–1880) do not single out *parts* of weapons. Here is one
14 exception, from a 1776 Maryland statute: "Resolved, that no muskets or rifles,
15 except by the owner thereof on his removal to reside out of this province, or any
16 gun barrels, gun locks, or bayonets, be carried out of his province, without the leave
17 of the council of safety for the time being." [1776 Md. Laws 146].

18 75. I surveyed the gun regulations in the Duke Historical Database from
19 the early medieval period through 1885 to see what terminology was used. None of
20 the laws that prohibit weapons, aside from the Maryland statute above, specifies a
21 gun part or ammunition case or accoutrements of any kind. Although many present
22 a list of banned or prohibited weapons—usually without defining them [the
23 assumption is that the reader knows what they refer to], none of the laws mention
24 cartridge boxes, bullets, barrels, or other parts of any weapons.

25 76. Later, however, in the decades after the introduction of *magazines* as
26 'carriers or holders of one or more bullets,' laws and regulations against their
27 nonmilitary use started to appear. Here's a 1919 Maine law banning guns with
28 loaded magazines: "No person shall have a rifle or shotgun, either loaded or with a

1 cartridge in the magazine thereof, in or on any motor vehicle while the same is
2 upon any highway or in the fields or forests.”

3 77. Laws banning *machine guns* or firearms with *magazines* capable of
4 firing multiple times without reloading appear in Vermont (1923), Rhode Island
5 (1927), and Massachusetts (1927), among other states. Rhode Island’s law bans
6 magazines which fire automatically or which hold more than twelve rounds:
7 “machine gun include any weapon which shoots automatically and any weapon
8 which shoots more than twelve shots semi-automatically without reloading.”

9 78. A 1933 Texas law bans “machine guns” capable of firing “more than
10 five (5) shots or bullets.”

11 79. Finally, the Federal Firearms Act of 1934, which introduced a
12 nationwide system of taxes, fees, and registration requirements for the transfer of
13 certain types of guns, specifies in great detail the nature of the “firearms” covered
14 by the statute, including their barrel length and type of firing mechanisms: “(a) The
15 term ‘firearm’ means a shotgun or rifle having a barrel of less than eighteen inches
16 in length, or any other weapon, except a pistol or revolver, from which a shot is
17 discharged by an explosive if such weapon is capable of being concealed on the
18 person, or a machine gun, and includes a muffler or silencer for any firearm
19 whether or not such firearm is included within the foregoing definition.”

20 80. The Act also provides a specific definition of “machine gun”: “(b)
21 The term ‘machine gun’ means any weapon which shoots, or is designed to shoot,
22 automatically or semiautomatically, more than one shot, without manual reloading,
23 by a single function of the trigger.” [48 Stat. 1236. 73rd Congress, 2nd Session,
24 Ch. 757, HR 9741].

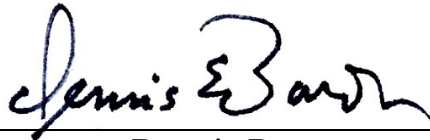
25 CONCLUSION

26 In sum, the term *accoutrements*, when it occurs alone, in a specifically military
27 context, may function as a general term that includes *arms*, though it does not
28 always include arms. In non-military contexts, *accoutrements* does not refer to

1 arms but instead to civilian attire associated with specific professions, like the
2 clergy, or to fancy dress. Such garb *does not* normally include weaponry. But there
3 is no data that I have found showing that arms includes accoutrements, magazines,
4 or any other parts of weapons.

5 I declare under penalty of perjury of the laws of the United States that the
6 foregoing is true and correct.

7 Executed on January 6, 2023 at Hove, England.
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12 Dennis Baron
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EXHIBIT A

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VITA

Education:

Ph.D., University of Michigan (English Language and Literature), 1971.
M.A., Columbia University (English and Comparative Literature), 1968.
A.B., Brandeis University (English and American Literature), 1965.

Positions held:

Research Professor of English and linguistics, University of Illinois, 2018–present.
Professor English, Emeritus, University of Illinois, 2018–present.
Professor of English and Linguistics, University of Illinois at Urbana-Champaign, 1984–2018.
Head, Department of English, University of Illinois at Urbana-Champaign, 1998–2003.
Acting Head, Department of English, Univ. of Illinois at Urbana-Champaign, 1997–98.
Director of Rhetoric, University of Illinois, 1985–97.
Director, Writing Outreach Workshop, Univ. of Illinois, 1985–88.
Professor, Campus Honors Faculty, Univ. of Illinois, 1988–2018.
Professor, College of Education, UIUC, Summer 1988.
Associate Professor of English and Linguistics, Univ. of Illinois, Urbana-Champaign, 1981–84.
Assistant Professor of English and Linguistics, Univ. of Illinois, Urbana-Champaign, 1975–81.
Assistant Professor of English, The City College of CUNY, 1973–74.
Assistant Professor of English, Eastern Illinois University, 1971–73.

Fellowships and Grants:

John Simon Guggenheim Memorial Foundation Fellow, 2016–17.
Faculty Fellow, Program for the Study of Cultural Values and Ethics, Univ. of Illinois, Spring 1992.
National Endowment for the Humanities Fellowship, calendar year 1989.
Newberry Library National Endowment for the Humanities Fellowship, 1988–89 (offered, not held).
IBM Project Excel Grant C-41, 1986-87: “Computer Analysis of Student Writing.”
Associate, Center for Advanced Study, University of Illinois 1984–85.
Fulbright Lecturer, University of Poitiers, France, 1978–79.
Fellow, Center for Advanced Study, University of Illinois, 1978 (offered, not held).
University of Illinois Research Board grants, multiple years, 1978–2017.

Books:

1. *You Can't Always Say What You Want: The Paradox of Free Speech*. Cambridge University Press, 2023. (In press; available Dec., 2022).

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2. ***What's Your Pronoun? Beyond He and She***. Liveright, 2020; paperback, 2021. Reviews: *New York Times Book Review*, *The Times* (London); *The London Review of Books*; *Harpers*; *The Atlantic*; *The Economist*; *Attitude*.
3. ***A Better Pencil: Readers, Writers and the Digital Revolution***. Oxford University Press, 2009, pp. xviii + 259. Paperback edition, 2012. Chinese translation, 2012. Reviews: *Salon*; *City Journal*; History News Network; *The Scotsman*; *Library Journal*; *internet review of books*; *Montreal Mirror*; Innovation Leadership Network; mantex.com (Manchester, England); *The Star* (Malaysia); *Times Higher Education*; *International Journal of Communication*; *The Guardian*; *Choice*; *American Scientist*; *3quarksdaily*, *The New Yorker*; *Arts Journal*.
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5. ***The English-Only Question: An Official Language for Americans?*** Yale University Press, 1990; paper ed., 1992. Reviews: *Publishers Weekly*; *Washington Post Book World*; *Booklist*; *Library Journal*; *Education Week*; Hazel New York City Tribune; *The Bookwatch—Midwest Book Review*; *Change*; *Choice*; *The Jerusalem Post*; *Times Literary Supplement*; *American Political Science Review*; *Book Review Digest*; *American Journal of Sociology*; *Publishers Weekly*; *College English*; *Modern Language Journal*; *Language Problems and Language Planning*; *Language*.
6. ***Declining Grammar and Other Essays on the English Vocabulary*** National Council of Teachers of English. Reviews: *Newsweek* (Dec. 11, 1989), p. 71; William Safire, *New York Times Magazine*; *The State Journal-Register* (Springfield, IL); *The Chicago Tribune*; *The Chicago Sun-Times*; *The Denver Post*; *Library Materials Guide*; *Book Report*; *NATE News*; *Language*; *Young Adult Paperback Book Guide*.
7. ***Grammar and Gender*** Yale University Press, 1986; paper ed., 1987. Reviews: *Kirkus Reviews*; *Publishers Weekly*; *Patriot Ledger* (Quincy, MA); *The Washington Times Magazine*; John Simon, *The New Leader*; *Chronicle of Higher Education*; *Los Angeles Times*; *Library Journal*; *Insight*; *Champaign-Urbana News-Gazette*; *Choice*; *Language Monthly*; *The Times Literary Supplement*; *Psychology Today*; *Virginia Quarterly Review*; *The Toronto Star*; *ETC.*; *Book Review Digest*; *Chicago Tribune*; *Akron (OH) Beacon Journal*; *Clearwater (FL) Sun*; *Corpus Christi (TX) Caller-Times*; *Wilkes-Barre (PA) Times Leader*; *Troy (NY) Record*; *The Editorial Eye*; *Studies in the American Renaissance*; *Lingua*; *Modern Language Review*; *Review 9*; *American Speech*; *Southern Quarterly Review*; *Signs*; *Language*; *JEGP*; *Frontiers*; *Anglia*; *Journal of English Linguistics* Nominated for the Mina P. Shaughnessy Medal of the Modern Language Association.
8. ***Grammar and Good Taste: Reforming the American Language*** Yale University Press, 1982; paper ed., 1984. Reviews: *Library Journal*; *America*; *The New York Times Book Review*; *The Washington Post Book World*; *Chronicle of Higher Education*; *The Times* (London); *The Los Angeles Times Book Review*; *Journal of American History*; *Encounter*; *American Literature*; *Journal of American Studies*; *Amerikastudien*; *Book Review Digest*; *Journal of English and Germanic Philology*; *Technical Communication*; *The Augusta Chronicle*, *Augusta Herald*; *American Studies*; *South Atlantic Quarterly*; *English Language Notes*; *World Literature Today*; *History of Education Quarterly*; Caroline Bokinsky, *Studies in the American Renaissance*; *Etudes Anglaises*; *Review of English Studies*; *College Composition and Communication*; *American Speech*; *Anglia*; *Book Review Digest*; *ESQ*; *English Journal*. Selected for the "Editor's Choice" section of *The New York Times Book Review*. Selected by the Library of Congress for recording for the blind. Nominated for the 1982 Mina P. Shaughnessy Medal and the 1987 James Russell Lowell award of the Modern Language Association; selected by the Editorial Board of the National Council of Teachers of English for distribution as an affiliate publication of the NCTE.

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9. ***Going Native: The Regeneration of Saxon English***. Publication of *The American Dialect Society*, No. 69, University of Alabama Press, 1982.
10. ***Case Grammar and Diachronic English Syntax***. Mouton, 1974. Reviews: *Linguistics*; *Indogermanische Forschungen*; *The Year's Work in Old English Studies*; *Revue Belge de Philologie et d'Histoire*.

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Recent Media:

“Does the Second Amendment Actually Give You the Right to Own a Gun?” *Think*, with Andrew Miller, NBC News, May 26, 2022. <https://www.nbcnews.com/think/video/does-the-2nd-amendment-actually-give-you-the-right-to-own-a-gun-140886597910>

“The Plain Language Movement.” Part of Stephen Fry’s series “English Delight,” BBC Radio 4, August 2014.

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168. "Ebonics and the Politics of English." *World Englishes* 19 (March, 2000): 5-19.
169. "Technology's Impact on Writing." Letter. *Chronicle of Higher Education*, Jan. 21, 2000, B11.
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The Web of Language: a blog running from 2007 to the present dealing with issues of language and technology:
<http://bit.ly/1B29f6v> Over 1.5 million page views..

Recent Invited Lectures, Workshops and Conference Presentations:

1. "Corpus Linguistics and the Original Meaning of the Second Amendment." University of Chicago Law School, 12 January, 2021.
2. Author interviews, "What's Your Pronoun?" New York Public Library, 4 February, 2020; Politics and Prose Books (Washington, DC), 5 February; Cuyahoga County Public Library. 6 February;

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- Kansas City Public Library (MO), 11 February; Town Hall Seattle, 16 February; Powells Books, Portland OR, 17 February; City Lights Books, San Francisco, 18 February.
3. "Guns and Grammar: Big Data and the Meaning of 'bear arms' in the Second Amendment." Conference on Law and Corpus Linguistics, Brigham Young Univ. Law School, Feb. 6-8, 2019.
 4. "Corpus evidence and the meaning of 'bear arms.'" Symposium: *District of Columbia v. Heller* 10 years on, Hastings College of Law, San Francisco, CA, Jan. 18, 2019.
 5. "What's Your Pronoun?" Language Policy Forum, Sheffield Hallam University, UK, June 1, 2018.
 6. "America's War on Language," Invited Lecture, University of Pennsylvania, April 19, 2018.
 7. "Guns and Grammar: The Linguistics of the Second Amendment," Neubauer Symposium on Historical Semantics, University of Chicago, April 13, 2018.
 8. "Speak the Language of Your Flag: Language and Immigration in the US, 1918-2018," Language and Borders Conference, University of Bristol, UK, March 26, 2018.
 9. "Pronoun Showdown," Invited lecture, University of Essex, UK, Nov. 23, 2017.
 10. "Going native: Brexit prompts linguistic cleansing." Conference on UK Language Policy after Brexit. Sheffield Hallam University (Sheffield, UK), Sept. 15, 2016.
 11. "Pronoun Showdown: Are nonbinary pronouns and singular *they* ruining the language or making English great again?" Univ. of Tennessee (Knoxville), April 11, 2016.
 12. "Speak the language of your flag." Present-Day English Discussion Group, Modern Language Association. Jan. 9, 2014.
 13. "#twitterrevolution: Destabilizing the world, 140 characters at a time." Univ. of Sussex (Brighton, UK). March 21, 2013.
 14. "Speak the language of your flag." In "creative" conversation, with Michael Erard. *Modern Language Association*. Boston, Jan. 3, 2013. Speakers invited by MLA Executive Director Rosemary Feal.
 15. "Official English from the school house to the White House." Englishes in Europe Conference. Univ. of Sheffield. April, 2012.
 16. "#twitterrevolution: Destabilizing the world, 140 characters at a time." Temple Contemporary, Temple University Art Museum. Oct. 11, 2012.
 17. "Guns and grammar: Linguistic authority and legal interpretation in *Washington, D.C., v. Heller*" Stanford University. Nov. 10, 2011.
 18. "Should everybody write? The destabilizing technologies of communication." Univ. of Chicago Semiotics Workshop, March 11, 2010.
 19. "Guns and grammar: The linguistics of the Second Amendment." Law and Society Annual Conference, Denver, CO, June 30, 2009.
 20. "Let's go to the phones." Univ. of Michigan invited lecture. Dec. 5, 2008.
 21. "Policing English in America from the White House to the schoolhouse." Conference on prescriptivism in language. Univ. of Paris VII (Sorbonne), Paris, FR. Nov. 15, 2007.
 22. "It's All Your Fault: Who's Really to Blame for the Literacy Crisis?" Conference on College Composition and Communication. New York City, March 2007.
 23. "No University Student Left Behind: Writing and the Secretary of Education's Commission on Higher Education." Conference on College Composition and Communication. Chicago, March 2006.
 24. "The Perils of the new SAT Writing Test." Conference on College Composition and Communication. San Francisco. March 17, 2005.
 25. "Spanish, English and the New Nativism." Modern Language Association. Philadelphia. Dec. 30, 2004.
 26. "Reading and Writing in the Digital Age." Invited presentation. Illinois Library Association, Chicago, September 30, 2004.
 27. "Language Policies and Language Politics in the United States." "English and Minority Languages in the 2000 Census." Invited lectures, Univ. of Ryukyu, Okinawa, Japan, June, 2004.
 28. "TeknoFear." Invited lecture, Northeastern Illinois University, April 15, 2004.
 29. "Standards: They're Not for Everybody." Conference on College Composition and Communication. San Antonio, TX, March 25, 2004.

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30. "The New Technologies of the Word." Plenary lecture. International Association of World Englishes Conference, Univ. of Illinois, October 17, 2002.
31. "Writing Effective Promotion Dossiers," Provost's Seminar, Univ. of Illinois, Sept. 7, 2001.
32. "Promotion and Tenure," a workshop for new executive officers, Association of Departments of English seminar, Monterey, California, June 29, 2001.
33. "From Pencils to Pixels: The New Technologies of Literacy." Invited lecture, UC Davis, March 2, 2001.
34. "The Illinois Professional Learning Partnership." Conference on College Composition and Communication, Denver, CO, March 15, 2001.
35. "Writing Effective Third-Year Faculty Reviews," Provost's Seminar, Univ. of Illinois, Feb. 26, 2001.
36. "Outreach for the Humanities," response to Graham Spanier; Chancellor's Conference, Univ. of Illinois, Jan. 31, 2001.
37. "Other Teachers' Students." Conference on College Composition and Communication, Minneapolis, MN, April 15, 2000.

Recent Media Interviews

1. Interviews for *What's Your Pronoun?* 2020-21: CBS Radio (NYC); NPR Weekend All Things Considered; CAP Radio (Sacramento, CA); Wisconsin Public Radio; KPBS San Diego; KWGS, Tulsa, OK; Slate: The Gist; KERA Radio; KATU TV, Portland, OR; KQED, San Francisco Public Radio; KPCC, Los Angeles; Talk the Talk (podcast); The Vocal Fries (podcast); That Word Chat (podcast).
2. "Tapestry," CBC-Radio "The Longing for Belonging," interview on pronouns, June 28, 2018.
3. "Air Talk," Larry Mantle, KPCC-NPR Los Angeles, Pronouns, Mar. 6, 2018.
4. "Do Official English laws work?" interview, KCBS, San Francisco. Aug. 24, 2017.
5. "Latinos in America." PBS documentary, aired October, 2013.
6. Various radio appearances on WILL-AM discussing language issues 1984-present.
7. "Extension 720" with Milt Rosenberg. WGN radio, Oct. 16, 2009. 2-hour interview about *A Better Pencil*.
8. Steve Fast, "The Classroom Connection" Oklahoma Public Radio, interview about *A Better Pencil*. Oct. 1, 2009.
9. Valerie Richardson Show. WPKN, Bridgeport CT, April 21, 2009. Half-hour interview about my work on usage and on technology.
10. Jim Brown, "The Current." CBC-Radio, Canada. July 15, 2008. Interview on Esperanto.
11. "The Peter Laufer Show", Green Radio 960 (San Francisco). 60 min. interview on Broadcast English, Dec. 28, 2008.
12. "Official English in Small Town America," *Eight Forty-Eight*, WBEZ-FM (Chicago public radio), June 13, 2007. Lead interview for the show, also featured on the WBEZ web site: http://www.wbez.org/Program_848_Segment.aspx?segmentID=11395
13. "The English Language." Focus 580, WILL-AM, multiple appearances each year from 1982-present.
14. "Good English." The Robin and Maynard Show. KQBZ-FM (Seattle), May 3, 2005.
15. "Pronunciation in American English." Interview by Avi Arditti and Roseann Skirble broadcast on "Coast to Coast" by Voice of America (4/24/03); posted on voanews.com/wordmaster.
16. "The English Language," The Joan Rivers Show, WOR-AM, New York, June 25, 2001.
17. "The New Oxford Dictionary of English," "Sandy Rios Live," WYLL-FM, Chicago, Aug. 14, 1998.

Editorships and Commissions:

Chair, Committee on Public Policy, Conference on College Composition and Communication, National Council of Teachers of English, 2003-06.

Dennis Baron, *Vita*, 13

Member, Board of Advisors for the television series “Do You Speak American?” with Robert MacNeil.
Member, *PMLA* Advisory Committee, 1998-2001.
Member, editorial advisory board, *Liverpool Studies in Language and Discourse*, 1993-present.
Member, MLA Delegate Assembly, 1998-2003.
Chair, MLA Division on Language and Society, 2001-02.
Member, Commission on Language, National Council of Teachers of English, 1984-87; 1999-2002.
Editor, *Publication of the American Dialect Society* (monograph series) 1984-93.
Member, Committee on Language and the Schools, Linguistic Society of America, 1992-1997.
Associate Editor, *Publication of the American Dialect Society*, 1982-84.

Memberships in Professional Organizations:

American Dialect Society (life member; member, Committee on New Words, 1975-82; member, Committee on Usage, 1982-present; member, Centennial Publications Committee; Centennial Publicity Committee; Centennial Documentaries Committee).
Modern Language Association (member, Delegate Assembly, 1996-99).
National Council of Teachers of English (member, Commission on the English Language, two terms). Chair, Committee on Public Language, 2009-12.
Conference on College Composition and Communication.
Conference of Editors of Learned Journals, 1985-93.
Linguistic Society of America; member, Committee on Language in the Schools, 1992-94.
Illinois Association of Teachers of English (member, program committee, 1987-88).

Biographical Notices:

Who's Who in America
Directory of American Scholars
Contemporary Authors
Who's Where Among Writers
International Authors and Writers Who's Who
International Linguistic Directory
Who's Who in American Education
Who's Who in the World
Who's Who in the Humanities

Consulting:

Legal consulting and expert witness reports and testimony for a variety of law firms and for the State of California Attorney General..

Media consulting for television, radio, and newspapers, including ABC's Nightline, Champaign-Urbana News-Gazette, The Chicago Tribune, Cincinnati Enquirer, Los Angeles Times, The McNeil-Lehrer Report, The New York Times, Newsweek, Orlando Sentinel, Prentice-Hall, Scripps-Howard Newspapers, Scott-Foresman, Inc., Springfield (IL) Register, USA Today, U.S. News and World Report, WICD-TV (Champaign, IL), William Safire.

Professional consulting for numerous academic and university presses.